

FEDERAL ELECTION COMMISSION

11 CFR Parts 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9012

[Notice 1983-18]

Presidential Election Campaign Fund Provisions

AGENCY: Federal Election Commission.

ACTION: Transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations which implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, and have transmitted those regulations to Congress pursuant to 26 U.S.C. 9009(c). The revisions are based on the Commission's experience in administering the Act and on public comments received on the Notice of Proposed Rulemaking. Many of the provisions in these regulations have been revised to assure consistency with the recently revised Presidential Primary Matching Fund Regulations, 11 CFR Part 9031 *et seq.* In addition, the revisions include a new Part 9012 regarding unauthorized expenditures and contributions which follows 28 U.S.C. 9012. Further information on the intended effect of the revised regulations is contained in the supplemental information below.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 28 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9560.

SUPPLEMENTARY INFORMATION: The revisions are based on the Commission's experience in administering the Act and on public comments received in response to the Commission's Notice of Proposed Rulemaking [48 FR 14532; April 4, 1983]. One issue raised in the Notice of Proposed Rulemaking was that of providing public funding for independent candidates. After receiving public comment and Commission consideration of this question, these provisions were removed from the regulations.

26 U.S.C. 9009(c) requires that any rule or regulation prescribed by the Commission to implement Chapter 95 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of

the Senate prior to final promulgation. The Commission may finally prescribe the regulations in question after they have been before both Houses of Congress for 30 legislative days. The following regulations were transmitted to Congress on July 1, 1983.

Explanation and Justification of the Presidential Election Campaign Fund Regulations, Parts 9001 through 9007 and new Part 9012.

Part 9001—Scope

Section 9001.1 Scope.

This section follows current § 9001.1

Part 9002—Definitions

Section 9002.1 Authorized Committee.

This section generally follows current § 9002.1 but subsection (d) has been added to make clear that responsibilities of the candidate are also those of his or her authorized committee(s).

Section 9002.2 Candidate.

This section generally follows current § 9002.2.

Section 9002.3 Commission.

This section follows current § 9002.3.

Section 9002.4 Eligible Candidates.

This section follows current § 9002.4.

Section 9002.5 Fund.

This section follows current § 9002.5.

Section 9002.6 Major Party.

This section follows current § 9002.6.

Section 9002.7 Minor Party.

This section follows current § 9002.7.

Section 9002.8 New Party.

This section follows current § 9002.8.

Section 9002.9 Political Committee.

This section follows current § 9002.9.

Section 9002.10 Presidential Election.

This section follows current § 9002.10.

Section 9002.11 Qualified Campaign Expense.

Subsection (a) generally follows current § 9002.11(a).

Subsection (b) generally follows current § 9002.11(b) but (b)(2)(iii) has been added to conform to 11 CFR 9032.9(b)(3). In subsection (b)(4), references to expenditures for travel and services provided to Secret Service personnel and other staff required by law have been deleted as other government regulations govern payment for those expenditures. Subsection (b)(5) generally follows current § 9002.11(b)(5) but clarifies that if payments for legal and accounting services which are

provided solely to ensure compliance with the Act and Chapter 95 of Title 26 are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation.

Subsection (c) has been revised to provide that expenditures incurred in accordance with § 9004.4 are qualified campaign expenses even if incurred outside of the expenditure report period. This subsection also provides a cross reference to § 9004.4(b) which sets forth examples of what is a non-qualified campaign expense.

Section 9002.12 Expenditure Report Period.

This section follows current § 9002.12.

Section 9002.13 Contribution.

This section follows current § 9002.13.

Section 9002.14 Secretary.

This section follows current § 9002.14.

Section 9002.15 Political Party.

This section follows current § 9002.15.

Part 9003—Eligibility for Payments

This Part has been revised to delete current §§ 9003.6, 9003.7, and 9003.8. The provisions of these sections are now incorporated in subsection (b) of § 9003.1 which sets forth the various conditions to which a candidate and his or her authorized committee(s) must agree in order to become eligible to receive payments from the Fund. The Commission's decision to include these items in the candidate agreement is consistent with their inclusion in the candidate agreement for Presidential primary candidates.

Section 9003.1 Candidate and Committee Agreements.

This section has been reorganized for clarity into two subsections, (a) and (b). Subsection (a) sets forth the general requirements that a candidate must meet to become eligible to receive payments and basically follows current § 9003.1 (a) and (b). Subsection (b) sets forth in greater detail the various conditions to which a candidate must agree, and incorporates the provisions of current § 9003.6, § 9003.7 and § 9003.8. Subsection (b)(1) specifies that the candidates shall have the burden of proving that disbursements made by them, or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11. Subsection (b)(2) contains an agreement by the candidate to comply with the documentation requirements of § 9003.5.

Subsections (b) (3) and (4) require the candidate to explain the connection between the disbursements and the campaign and to maintain and furnish to the Commission documentation relating to receipts and disbursements.

Subsection (b)(5) generally follows current § 9003.7. Subsection (b)(6) generally follows current § 9003.1(a)(5). Subsections (b) (7) and (8) generally follow current § 9003.7 (a) and (b).

Section 9003.2 Candidate Certifications.

Subsections (a) and (b) generally follow current § 9003.2(a) and (b). Subsection (c) generally follows current § 9093.2(c), with three additions. In subsection (c)(3)(i) the definition of "personal funds" and "personal funds of his or her immediate family" has been rearranged to make clear that the candidate must have legal access or control over the funds whether he or she has legal or equitable title to the property. Also in this subsection, the term "equitable interest" has been substituted for "beneficial enjoyment" when defining the types of ownership interest that may be used as personal funds. "Equitable interest" is a more specific term which is used as a definition of ownership or pecuniary interest. Subsection (c)(3)(iii) has been added to clarify what portion of jointly owned property the candidate's share is considered to be. These changes were made as part of the Commission's regulations on "Candidate's Use of Property in Which Spouse Has An Interest." For a fuller discussion of these changes, see 48 F.R. 19019 (April 27, 1983). Subsection (d) generally follows current § 9003.2(d).

Section 9003.3 Allowable Contributions.

This section has been substantially revised and expanded from the current regulation. Subsection (a), which permits a candidate to establish a legal and accounting compliance fund, has been limited to major party candidates. While minor and new party candidates may also make disbursements for legal and accounting services to ensure compliance with the Act, which disbursements would not count against the expenditure limit, there is no need for those candidates to establish a separate account for that purpose as they can already accept private contributions. Therefore, the need for a compliance fund only arises when a major party candidate receives full federal funding and cannot accept private funds except for the purposes permitted by the compliance fund. This

rule does not, however, prohibit other candidates from establishing separate accounts if they so desire.

Subsection (a)(1)(ii) has been revised to make clear that excess funds from the candidate's primary account may be transferred to the compliance fund without regard to the contribution limitations. Thus, the candidate need not determine which of the funds transferred represent contributions which would otherwise count against the amount those persons could contribute to the compliance fund.

Subsection (a)(2)(i) has been revised to make clear that a portion of payroll, overhead and computer services costs may be defrayed from the compliance fund to the extent such costs relate to ensuring compliance with the Federal Election Campaign Act and the Presidential Election Campaign Fund Act. This provision has been patterned after 11 CFR 9035.1(c) but has been expanded to include computer costs. As in section 9035.1(c), a candidate may demonstrate that a larger proportion of the described costs are related to ensuring compliance than the percentages provided in this section would cover. This section also provides that payroll, overhead and computer services costs must be initially paid from the federal funds account and then may be reimbursed by the compliance fund at any time before the Commission's final repayment determination is made. In the limited circumstance in which a bona fide error is made and a qualified campaign expense is paid from the compliance fund, the federal fund account may reimburse the compliance fund.

Subsections (a)(2)(iii) and (iv) follow current §§ 9003.3(a)(2)(iii) and (iv). Subsection (a)(3) generally follows current § 9003.3(a)(3).

Subsection (b) has been revised to address major party candidates in the event of a deficiency in the Fund. Such candidates may solicit private contributions to defray qualified campaign expenses in order to make up the deficiency. They may choose to deposit these contributions in the same account as the federal funds received or they may deposit them separately. This approach is consistent with the Commission's view in the case of Presidential primary candidates, who may also defray qualified campaign expenses from both federal and private funds. Subsection (b)(5) follows current § 9003.3(b)(4) but is revised to more accurately reflect the provisions of 11 CFR 100.8(b)(2) and 2 U.S.C. 431(9)(B)(vi).

Subsections (b) (5), (6), (7) and (8) provide that a candidate may exempt a portion of payroll and overhead costs from the expenditure limitation as fundraising costs. A candidate may also exempt a portion of overhead, payroll and computer services costs as compliance costs. As in subsection (a), these provisions follow 11 CFR 9035.1(c).

Subsection (c) contains the provisions applicable to minor and new party candidates. This subsection has been revised from current § 9003.3(b) to reflect the Commission's decision that one account may be used to defray both qualified campaign expenses and the costs normally payable from a compliance fund. The provisions regarding the exemptions for compliance and fundraising costs parallel those in subsection (b).

The Commission considered and rejected a proposal to add provisions to subsections (a) through (c) that would have permitted candidates to use private contributions deposited in their compliance fund or campaign account for transition expenses after all other obligations including repayments and penalties had been paid. In view of the "Transition Trust" permitted by Advisory Opinion 1980-87 and the funds provided under the Presidential Transition Act of 1963, Pub. L. 88-277, 78 Stat. 153, the Commission decided not to include a provision to this effect in these regulations.

Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds.

This section generally follows current § 9003.4

Section 9003.5 Documentation of Disbursements.

This section generally follows current § 9003.5. In the Notice of Proposed Rulemaking, this section required the "identification" of a payee; however, the Commission has determined to retain the language of the current regulation which requires the "full name and mailing address" of the payee. The latter was retained as a clearer statement of the information sought.

In addition, the Commission notes that the use of the term "purpose" in this section has the same meaning as in 11 CFR 104.7(b)(4)(i)(A).

Subsection (c) has been added to follow the Presidential Primary Matching Fund regulations at 11 CFR 9033.11(c).

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

Section 9004.1 Major Parties.

This section follows current § 9004.1.

Section 9004.2 Pre-Election Payments for Minor and New Party Candidates.

This section has been divided into three parts to set forth separately and in detail the conditions which candidates of a minor party in the preceding election, candidates of a minor party in the current election, and new party candidates must satisfy to qualify for pre-election payments from the Fund. Otherwise, this section generally follows current § 9004.2.

Section 9004.3 Post-election Payments.

Subsection (a) generally follows current § 9004.3(a) but has been reworded for clarification. Subsection (b) sets forth the maximum amount of payments which may be received and generally follows current § 9004.3(c). Subsection (c) generally follows current § 9004.3(b).

Section 9004.4 Use of Payments.

This section has been reorganized to provide examples of what may be considered qualified and non-qualified campaign expenses. The format of this section generally follows that of 11 CFR 9034.4.

Section 9004.5 Investment of Public Funds.

This section generally follows current § 9004.5 but contains a new provision requiring repayment of a net loss resulting from the investment of public funds. A net loss will be considered a non-qualified campaign expense and repayable under § 9007.2(b)(2)(i).

Section 9004.6 Reimbursements for Transportation and Services Made Available to Media Personnel.

All references to reimbursement for transportation, services and facilities made available to the Secret Service or other staff authorized by law or required by national security to travel with a candidate have been deleted from this section. Other government regulations govern payment for those expenditures.

In subsection (a), language has been added to clarify that expenditures for services provided to media personnel are subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

Subsection (b) follows the Presidential primary regulations at 11 CFR 9034.6 and provides that the reimbursements received from each person may not

exceed the total cost of providing services to that person by more than 10%. The 10% figure will be based on the total cost of providing services to each person over the course of the campaign rather than on a per-trip basis. Candidates may include the cost of "down-time" for leased aircraft in the amount requested for reimbursement as this is a cost of providing transportation to the media. The reimbursements may be deducted from the amount applied to the overall expenditure limit but only to the extent that the reimbursements do not exceed the actual cost to the campaign.

Section 9004.7 Allocation of Travel Expenditures.

This section generally follows current § 9004.7 with one significant change. Subsection (b)(5) has been revised to require that candidates using government conveyance, such as government aircraft, pay the equivalent of first-class commercial air fare or commercial charter fare rather than the actual cost of such government transportation. Candidates must also pay the cost of other government conveyances or accommodations used such as government-owned cars or buses.

Section 9004.8 Withdrawal by Candidate.

This section has been revised to delete much of the language regarding the statement to be filed by a candidate who withdraws. Instead, this section now refers to new § 9004.9, which consolidates the requirements for statements to be filed by all candidates. In addition, the time for filing a statement under this section has been shortened from 60 to 30 calendar days.

Section 9004.9 Net Outstanding Qualified Campaign Expenses.

This new section sets forth requirements for filing statements similar to the statements of net outstanding campaign obligations filed by Presidential primary candidates under 11 CFR 9034.5. It reflects requirements consistent with past Commission practice.

Unlike the Presidential primary regulations, however, this section sets different deadlines for candidates who withdraw, candidates seeking post-election funding and all other candidates. Candidates seeking post-election funding must file a preliminary statement to aid in determining their entitlement to public funds as well as a statement at the time other candidates must submit theirs.

Subsection (d) follows the Presidential primary regulations at 11 CFR 9034.5(b). Subsection (e) follows 11CFR 9034.5(e).

Section 9004.10 Sale of Assets Acquired for Fundraising Purposes.

This new section follows the Presidential primary regulations at 11 CFR 9034.9. Its application here is limited, however, to minor and new party candidates and to major party candidates who have not received full federal funding due to a deficiency in the Fund.

Part 9005—Certification by Commission

Section 9005.1 Certification of Payments for Candidates.

This section reflects the provisions of current §§ 9005.1 and 9005.2 but has been reorganized and expanded. Subsection (a) addresses certification of payments for major party candidates. Subsection (b) addresses certification of pre-election payments for minor and new party candidates.

Subsection (c) has been added to follow the procedures used by the Commission in 1980 to certify post-election payments to minor and new party candidates but adds the requirement to file a preliminary statement of net outstanding qualified campaign expenses pursuant to section 9004.9.

Subsection (d) follows current § 9005.1(b) regarding the finality of Commission certifications.

Section 9005.2 Payments to Eligible Candidates from the Fund.

This section generally follows current § 9005.3.

Part 9006—Reports and Recordkeeping

Section 9006.1 Separate Reports.

This section generally follows current § 9006.1.

Section 9006.2 Filing Dates.

This section follows current § 9006.2.

Part 9007—Examinations and Audits; Repayments

Section 9007.1 Audits.

Subsection (a)(1) follows current § 9007.1. The remaining provisions of this section follow the provisions of the Presidential primary regulations at 11 CFR 9038.1.

Section 9007.2 Repayments.

This section has been reorganized to follow the format of the Presidential primary regulations at 11 CFR 9038.2.

Section 9007.3 Extensions of Time.

This new section follows the Presidential primary regulations at 11 CFR 9038.4.

Section 9007.4 Additional Audits.

This section follows current § 9007.3.

Part 9008—Federal Financing of Presidential Nominating Conventions

This Part has not been changed; however, the separate subchapter designation for this Part has been removed and this Part included in subchapter E to permit the correct numbering of new Part 9012 in accordance with the corresponding statutory citation. Part 9012 was printed as Part 9007a in the Notice of Proposed Rulemaking.

Part 9012—Unauthorized Expenditures and Contributions**Section 9012.1 Excessive Expenses.**

This new section follows 26 U.S.C. 9012(a).

Section 9012.2 Unauthorized Acceptance of Contributions.

This new section follows 26 U.S.C. 9012(b).

Section 9012.3 Unlawful Use of Payments Received from the Fund.

This new section follows 26 U.S.C. 9012(c).

Section 9012.4 Unlawful Misrepresentations and Falsification of Statements, Records or Other Evidence to the Commission; Refusal to Furnish Books and Records.

This new section follows 26 U.S.C. 9012(d).

Section 9012.5 Kickbacks and Illegal Payments.

This new section follows 26 U.S.C. 9012(e). In the Notice of Proposed Rulemaking, subsection (c) was inadvertently included regarding the penalty provisions of 9012(e). This subsection was deleted from the regulations in accordance with the Commission's practice of not including the statutory penalty provisions in the regulations.

Section 9012.6 Unauthorized Expenditures and Contributions by Political Committees.

This new section follows 26 U.S.C. 9012(f).